

## Wage and Hour Division, Labor

## § 780.146

*Waialua*, 349 U.S. 254; *Mitchell v. Budd*, 350 U.S. 473) are not included. This is also true when on-the-farm practices are performed for a farmer. As to when practices may be regarded as performed for a farmer, see § 780.143.

### **§ 780.145 The relationship is determined by consideration of all relevant factors.**

The character of a practice as a part of the agricultural activity or as a distinct business activity must be determined by examination and evaluation of all the relevant facts and circumstances in the light of the pertinent language and intent of the Act. The result will not depend on any mechanical application of isolated factors or tests. Rather, the total situation will control (*Maneja v. Waialua*, 349 U.S. 254; *Mitchell v. Budd*, 350 U.S. 473). Due weight should be given to any available criteria which may indicate whether performance of such a practice may properly be considered an incident to farming within the intent of the Act. Thus, the general relationship, if any, of the practice to farming as evidenced by common understanding, competitive factors, and the prevalence of its performance by farmers (see § 780.146), and similar pertinent matters should be considered. Other factors to be considered in determining whether a practice may be properly regarded as incidental to or in conjunction with the farming operations of a particular farmer or farm include the size of the operations and respective sums invested in land, buildings and equipment for the regular farming operations and in plant and equipment for performance of the practice, the amount of the payroll for each type of work, the number of employees and the amount of time they spend in each of the activities, the extent to which the practice is performed by ordinary farm employees and the amount of interchange of employees between the operations, the amount of revenue derived from each activity, the degree of industrialization involved, and the degree of separation established between the activities. With respect to practices performed on farm products (see § 780.147) and in the consideration of any specific practices (see §§ 780.148–780.158 and

780.205–780.214), there may be special factors in addition to those above mentioned which may aid in the determination.

### **§ 780.146 Importance of relationship of the practice to farming generally.**

The inclusion of incidental practices in the definition of agriculture was not intended to include typical factory workers or industrial operations, and the sponsors of the bill made it clear that the erection and operation on a farm by a farmer of a factory, even one using raw materials which he grows, “would not make the manufacturing \* \* \* a farming operation” (see 81 Cong. Rec. 7658; *Maneja v. Waialua*, 349 U.S. 254). Accordingly, in determining whether a given practice is performed “as an incident to or in conjunction with” farming operations under the intended meaning of section 3(f), the nature of the practice and the circumstances under which it is performed must be considered in the light of the common understanding of what is agricultural and what is not, or the facts indicating whether performance of the practice is in competition with agricultural or with industrial operations, and of the extent to which such a practice is ordinarily performed by farmers incidentally to their farming operations (see *Bowie v. Gonzales*, 117 F. 2d 11; *Calaf v. Gonzalez*, 127 F. 2d 934; *Vives v. Seralles*, 145 F. 2d 552; *Mitchell v. Hunt*, 263 F. 2d 913; *Holtville Alfalfa Mills v. Wyatt*, 230 F. 2d 398; *Mitchell v. Budd*, 350 U.S. 473; *Maneja v. Waialua*, supra). Such an inquiry would appear to have a direct bearing on whether a practice is an “established” part of agriculture. The fact that farmers raising a commodity on which a given practice is performed do not ordinarily perform such a practice has been considered a significant indication that the practice is not “agriculture” within the secondary meaning of section 3(f) (*Mitchell v. Budd*, supra; *Maneja v. Waialua*, supra). The test to be applied is not the proportion of those performing the practice who produce the commodities on which it is performed but the proportion of those producing such commodities who perform the practice (*Maneja v. Waialua*, supra). In *Mitchell v. Budd*, supra, the U.S. Supreme Court